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Art Unit 2872

Reply to Advisory Action of March 26, 2010.Arguments

From MPEP 2141.01, a rejection under 35 USC 103, based upon 35 USC 102(b), allows an applicant's work to be prior art if art is a statutory bar to the application (i.e. if application and art are of the same invention), just as if the application were rejected under 35 USC 102(b). Applicant's work is not prior art if there is no statutory bar.

Note 152, 35 USC 102, of United States Code Annotated (1984), contains the following statement:

"Absent statutory bar, applicant's own invention cannot be 'prior art' to him, but applications having the same inventor and claiming the same invention are subject to rejection for double patenting, while if the inventors are different, no such rejection can be made, and then interference is in order. In re Fout, Cust. & Pat. App. 1982, 675 F.2d 297."

With respect, the Examiner/Supervisory Patent Examiner should read MPEP 2141.01 more carefully. It does not allow applicant's work to be prior art under 35 USC 103 unless work falls under one of the statutory categories. It is not in conflict with MPEP 2129 or the above paragraph of U.S.C.A. (1984).

Yours sincerely,

R.H.

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INVENTOR